

May 31, 2012

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: May 30, 2012

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
CECILY TAYLOR, fka Cecily Michele) No. 08-30571DM
Bruno,) Chapter 7
Debtor.)
SIONE BRITES; LUCIVANIA NUNES;) Adversary Proceeding
DARLENE QUIEROZ; PAULO LOPES,) No. 08-3074DM
Plaintiffs,)
v.)
CECILY TAYLOR,)
Defendant.)

MEMORANDUM DECISION

The court conducted a prove-up hearing on January 31, 2012. At the conclusion of the hearing the court directed counsel for plaintiff Lucivania Nunes ("Nunes") to provide additional information concerning the term of the promissory note signed by Nunes at the urging of defendant Cecily Taylor ("Taylor"). Counsel was directed to up-load a form of judgment at the same time, after which the matter was to be deemed submitted.

On March 26, 2012, counsel filed a supplemental brief and his own declaration. Unfortunately he did not provide chamber's

1 copies to the court so the matter remained on the electronic
2 docket until discovered by the court days ago. Counsel also did
3 not up-load a proposed form of judgment as he had been directed.

4 Having reviewed the March 26, 2012 filings, the court is
5 satisfied that Taylor failed to disclose material facts, namely
6 the two year balloon due date of the note signed by Nunes. The
7 materiality of that non-disclosure coupled with all of the other
8 elements as stated on the record at the conclusion of the hearing
9 on March 31, 2012, constitute a factual basis on which to conclude
10 that Taylor is indebted to Nunes in an amount that is
11 non-dischargeable under 11 U.S.C. § 523(a)(2) as set forth below.
12 Accordingly, Nunes is entitled to a judgment of
13 non-dischargeability.

14 The court calculates the damages as follows:

| | | |
|----|---|---------------|
| 15 | Amounts Paid By Nunes On The note | \$69,212.88 |
| 16 | less Fair Market Value Of The Property | - \$35,908.88 |
| 17 | Deposit and Closing Costs | \$11,331.19 |
| 18 | Real Estate Taxes Paid | \$ 5,520.52 |
| 19 | Insurance Paid | \$ 869.39 |
| 20 | less Set-Off From Settlement In State Court | -\$ 5,000.00 |
| 21 | TOTAL | \$46,025.10 |

22 Nunes was invited to provide specific proof to justify her
23 claim for general or punitive damages. No such proof was offered,
24 and therefore she is not entitled to any additional damages.

25 Counsel for Nunes should up-load (and serve upon Taylor) a
26 proposed form of judgment in the amount of \$46,025.10, which
27 amount is non-dischargeable under 11 U.S.C. § 523(a)(2). The
28 proposed judgment should be served on Taylor at her last known

1 address.

2 **END OF MEMORANDUM DECISION**

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COURT SERVICE LIST

Cecily Taylor
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